

February 11, 2016

VIA FEDERAL EXPRESS

The Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 037
Trenton, New Jersey 08625-0037

**Re: Application Pursuant to Rule 4:38A Requesting Designation of Volkswagen
“Clean Diesel” Litigation as Multicounty Litigation for Centralized Management**

Dear Judge Grant:

This is an application pursuant to Rule 4:38A and Directive # 08-12 requesting that the Supreme Court designate all lawsuits against Volkswagen Group of America, Inc. (“VWGoA”), and its affiliates, relating to alleged violations of emissions standards (hereinafter, “Clean Diesel”), as a Multicounty Litigation (“MCL”), to receive centralized management in accordance with criteria and procedures promulgated by the Administrative Director of the Courts.

Background of Current New Jersey “Clean Diesel” Actions

On September 18, 2015, the U.S. Environmental Protection Agency (“EPA”) issued a Notice of Violation (“NOV”) to Volkswagen Group of America, Inc. (“VWGoA”), Volkswagen AG, and Audi AG as part of its investigation into alleged violations of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401-7671q. The EPA issued a second NOV on November 2, 2015, to the above entities as well as to affiliates Porsche AG and Porsche Cars North America, Inc. The NOVs generally alleged that certain Model Year 2009 through 2015 Volkswagen, Audi and Porsche vehicles equipped with 2.0 liter and 3.0 liter engines, contained software which the CAA identified as “defeat devices,” that enabled the vehicles to evade emissions requirements by engaging full emissions controls only when official emissions testing occurred.

In the federal courts, over 600 consumer lawsuits have already been filed around the country, seeking various forms of relief, from VWGoA and others, based largely upon the contentions in the NOVs. On December 8, 2015, the Judicial Panel on Multi District Litigation (“JPML”) determined that these “Clean Diesel” actions “involve common factual questions,” and therefore, ordered that all such individual and putative class action lawsuits be consolidated and transferred to the United States District Court for the Northern District of California for “coordinated pretrial proceedings.” See Ex. A at 2 (JPML Transfer Order).

In the New Jersey state courts, twelve (12) such “Clean Diesel” lawsuits have been commenced to date; they are now pending in ten separate vicinages, from Atlantic County to

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Bergen County. These lawsuits include two putative class action lawsuits brought on behalf of all New Jersey owners and lessees of the affected vehicles, and ten lawsuits brought by individual owners or lessees of the various involved vehicles. These cases have been assigned to ten separate judges, with track assignments ranging from Track I to Track IV.

On December 18, 2015, while the motion for consolidation and centralization of all federal cases was still pending before the Judicial Panel on Multi District Litigation, VWGoA moved for consolidation of the New Jersey state court cases that were then pending pursuant to Rule 4:38-1(a). At that time, as there were only five lawsuits in New Jersey state courts, consolidation appeared feasible. Since the motion for consolidation was filed, however, an additional seven lawsuits already have been filed, and now these lawsuits are pending in ten vicinages, from Atlantic County to Hudson County. The increase in the number of actions scattered across the state thus now makes MCL centralization more appropriate. The motion for consolidation is scheduled to be heard by the Honorable Peter F. Bariso, Jr., on February 19, 2016. Defendant VWGoA has advised Judge Bariso that this MCL Application is being submitted and requested that the Court hold the motion to consolidate in abeyance pending a determination by the New Jersey Supreme Court with respect to this MCL Application.

A list of all consumer lawsuits current pending in the New Jersey state courts appears below, in the order filed:

1. *Eilender v. VWGoA*, No. HUD-L-4041-15: Putative Class Action in Superior Court, Hudson County (Track IV);
2. *Griffin v. VWGoA and Audi of America, Inc.*, No. MID-L-6137-15: Putative Class Action in Superior Court, Middlesex County (Track IV);
3. *Zuckerman v. VWGoA, Princeton Volkswagen, Princeton Automobile Co.*, No. MER-L-2396-15: Individual Action in Superior Court, Mercer County (Track II);
4. *Buswell v. VWGoA, Atlantic Volksagen/Foulke Management Corp.*, No. DC 005866-15: Individual Action in Special Civil Part, Atlantic County;
5. *Weiss v. VWGoA, Volkswagen AG*, No. BER-L-10393-15: Individual Action in Superior Court, Bergen County (Track II);
6. *Schmidt v. Audi of Am., Inc., Bellevue Audi f/k/a Barrier Audi*, MRS-L-3032-15: Individual Action in Superior Court, Morris County (Track III);

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7. *Felix v. VWGoA, and Union Volkswagen*, UNN-L-0053-16; Individual Action in Superior Court, Union County (Track I);
8. *Wapples v. VWGoA*, ESX-L-0123-16; Individual Action in Superior Court, Essex County (Track II);
9. *Deang v. VWGoA, and Jack Daniels Volkswagen*, BER-L-389-16; Individual Action in Superior Court, Bergen County (Track I);
10. *Dehaut v. VWGoA, and World Volkswagen*, MON-L-170-16; Individual Action in Superior Court, Monmouth County (Track I);
11. *Patullo, et al. v. VWGoA and Flemington Volkswagen*, L-19-16; Individual Action in Superior Court, Hunterdon County (Track I);
12. *Rudnick v. VWGoA and Flemington Volkswagen*, L-54-16; Individual Action in Superior Court, Chancery Division/Family Part, Hunterdon County Individual Action in Superior Court, Hunterdon County (Track II).

The “Clean Diesel” Actions Satisfy the Criteria for MCL Designation

Just as the federal actions satisfied the criteria for transfer and coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407, the New Jersey cases likewise satisfy the criteria for MCL designation and centralization pursuant to Rule 4:38A and Directive # 08-12. Indeed, the JPML’s findings and conclusions with respect to the MDL apply equally here and establish many of the criteria to be considered for MCL centralization: The JPML’s order states:

[W]e find that the actions in this litigation involve *common questions of fact*, and that centralization . . . will serve the *convenience of the parties and witnesses* and promote the *just and efficient conduct* of the litigation. All actions involve *common factual questions* regarding the role of VW and related entities in equipping certain diesel engines with software allegedly designed to engage emissions controls only when the vehicles undergo official testing, while at other times the engines emit nitrous oxide well in excess of legal limits. . . . *Centralization will eliminate duplicative discovery, avoid inconsistent pretrial rulings (especially on issues relating to class certification), and conserve the resources of the parties, their counsel and the judiciary.*

See Ex. A (Transfer Order) at 2 (emphasis added).

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The JPML's transfer and consolidation of the "Clean Diesel" actions weighs strongly in favor of MCL centralization. "Frequently, New Jersey designated MCLs are also the subject of parallel litigation pending in the federal courts. . . . New Jersey MCL judges have found coordination with the designated MDL judge to be an effective means of avoiding duplication of efforts, coordinating discovery, conserving resources and facilitating global settlements." New Jersey Multicounty Litigation (Non-Asbestos) Resource Book (4th ed. 2014) ("MCL Resource Book") at 15; *see also id.* at 14 ("it is vital that the judges handling these [state and federal] matters coordinate their efforts in order to maximize efficiency and economy"). Accordingly, MCL centralization is warranted because it is an essential first step toward enabling the encouraged coordination with the MDL Court and actions in other states.¹

The New Jersey "Clean Diesel" actions also satisfy the specified criteria for MCL designation for the following additional reasons:

- **There are many claims with common, recurrent issues of law and fact that are associated with a single product, mass disaster, or complex environment or toxic tort.**

There is no doubt that the New Jersey "Clean Diesel" actions involve common questions of law and fact that are associated with a single device applicable to various vehicles. All complaints assert claims against VWGoA, its affiliates, and/or dealerships for, *inter alia*, common law fraud, breach of warranty, breach of the CFA, breach of the Truth in Consumer Contract, Warranty and Notice Act ("TCCWNA"), N.J.S.A. § 56:12-15, *et seq.*, and unjust enrichment. As observed by the JPML, common questions of fact are present because each of the complaints fundamentally is based upon the NOV's and claim the same alleged wrongdoing regarding the defeat devices. *See Ex. A* at 2. The state court cases in New Jersey share the same characteristics. Although the causes of action pled vary to some degree, the facts underlying all of the lawsuits are fundamentally the same.

- **There are a large number of parties involved.**

The twelve state court "Clean Diesel" actions include two putative class actions filed on behalf of all New Jersey citizens who purchased or leased new or pre-owned vehicles containing "defeat devices." As such, there are a large number of parties involved. In addition, seven (7) independently owned and operated automobile dealerships are also named as defendants in the pending complaints as sellers/lessors of affected vehicles.

The standards for consolidation under R. 4:38-1 and MCL centralization under R. 4:38A are similar and both are met here. But, due to the recent influx in the number of cases filed across the State, MCL centralization now appears to be most appropriate and centralization, VWGoA submits, is necessary at this juncture. *Compare* Rule 4:38-1(a) (permitting

¹ There are related cases also filed in state courts other than in New Jersey.

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consolidation of "actions involving a common question of law or fact arising out of the same transaction or series of transactions"); *with* Directive # 8-12 (permitting centralization of actions involving "many claims with common, recurrent issues of law and fact").

- **There is geographical dispersement of parties.**

The pending matters are venued in ten (10) vicinages stretching throughout the State, including Atlantic, Bergen, Essex, Hudson, Hunterdon, Mercer, Morris, Monmouth, Middlesex, and Union counties.

- **There is a high degree of commonality of alleged injury or damages among Plaintiffs.**

Although the complaints plead entitlement to damages under various legal theories, there is a high degree of commonality in the types of injuries alleged and damages sought. All of the actions seek compensatory damages allegedly resulting from misrepresentations relating to the vehicles' ability to satisfy emissions standards and operate in an environmentally friendly manner. And, most cases seek damages for claimed diminution in value or for the cost of their vehicles.

- **There is a value interdependence between different claims, that is, the perceived strength or weakness of the causation and liability aspects of the case(s) are often dependent upon the success or failure of similar lawsuits in other jurisdictions.**

Because all cases are premised upon the same contentions in the NOV's regarding the inability of the affected vehicles to satisfy emissions standards, all of the lawsuits are related with respect to the crucial liability questions. Moreover, the success or failure of the diminution in value claims will certainly affect the handling and resolution of later cases.

- **There is a degree of remoteness between the court and actual decision-makers in the litigation, that is, even the simplest of decisions may be required to pass through layers of local, regional, national, general and house counsel.**

Given the presence of over 600 lawsuits within the federal MDL and the fact that similar actions are pending in state courts in at other states, there is necessarily some degree of remoteness between the court and actual decision-makers in the litigation, as many critical issues in the various matters will involve parties and counsel for Defendants involved in the federal MDL and other state court actions.

MCL centralization, however, would allow one New Jersey state court judge to coordinate case management and stay apprised of potential early settlement or mediation opportunities in the MDL and encourage similar efforts here in a manner consistent with the procedures and professionals already appointed by the MDL Court. In this regard, on January 19, 2016, the MDL Court appointed Robert S. Mueller III, former Director of the FBI, as

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Settlement Master “to facilitate settlement discussions among all parties to this multi-district litigation as soon as feasible.” *See* Ex. B, MDL Pretrial Order No. 6.

- **There is a risk of duplicative and/or inconsistent rulings, orders or judgments.**

MCL centralization is necessary because otherwise, there is a significant risk of duplicative and inconsistent rulings, orders, or judgments. Notably, when deciding to transfer the federal “Clean Diesel” actions, the JPML concluded that centralization will “avoid inconsistent pretrial rulings (especially on issues relating to class certification).” And in New Jersey, so far there are twelve (12) state court actions in ten vicinages, contemplating four Track Assignments, so the actions will proceed at different rates. For example, although *Zuckerman* was filed as a Track II case prior to *Felix*, *Wapples*, and *Deang*, which are, respectively, Track I, II, and I cases, it is entirely possible that without consolidation, *Zuckerman* might lag behind the others. Regardless, a track assignment selection cannot feasibly trump the criteria for MCL centralization.

The risk of inconsistent orders has already been highlighted through a motion for class certification that the *Griffin* Plaintiffs filed before issued was joined in that action or any other. The motion was filed on November 17, 2015, one month after the Complaint was filed and one month before VWGoA’s original answer date. VWGoA moved to strike the class certification motion, and the Court adjourned both motions, now scheduled to be heard on March 18, 2016, *i.e.*, after the consolidation motion.

- **Centralization would promote in the efficient utilization of judicial resources and the facilities and personnel of the court**

Centralization is needed in order to promote judicial economy and efficiency. Without centralization, it is possible that twelve judges will be forced to oversee twelve separate but in many ways overlapping actions, thereby duplicating scheduling orders, motion practice, and hearings, among other things. The waste of judicial resources without centralization, even though all of the actions involve common questions of law and fact, is readily apparent.

Furthermore, centralization will ensure that one MCL Court, rather than twelve (12) individual courts, will be coordinating with the MDL Court to the extent the MCL court determines appropriate. The MCL Resource Book explains that “[c]oordination can achieve major gains in efficiency and economy,” including “[r]eduction in litigation costs, delay, and judicial time and effort[.]” MCL Resource Book at 15.

- **Coordinated discovery would be advantageous.**

Centralized management of discovery and pre-trial proceedings would be advantageous because all of the actions involve the alleged role of VWGoA and/or its affiliates in equipping particular diesel engine vehicles with “defeat devices” for emissions testing in contravention of

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the CAA. *See also* Ex. A at 2. The lawsuits all allege common questions of law and fact stemming from the NOV's, so discovery will focus on the same liability inquiries.

Discovery as to the individual plaintiffs can be efficiently managed by the MCL Court in a centralized proceeding. To the extent some plaintiffs plead causes of actions not involved in other cases, discovery of the Defendants can be efficiently managed by the MCL Court. For example.

- **Centralization will not unreasonably delay the progress, increase the expense or complicate the processing of any action, nor will it otherwise prejudice any party.**

On balance, MCL centralization is the most efficient, cost-effective, and non-prejudicial vehicle for the "Clean Diesel" actions to be managed in the State of New Jersey.

First, centralization will not prejudice the plaintiffs. The plaintiffs in the two pending class actions, *Eilender* and *Griffin*, consented to consolidation. Although they objected to coordination with the MDL Court, this objection puts the cart before the horse and is a question left in the sound discretion of a judge overseeing either a consolidated or centralized action, if the latter, the MCL Resource Book encourages such coordination. Although certain plaintiffs objected to VWGoA's motion for consolidation, all individual plaintiffs are absent class members in the first-filed action, *Eilender*, a putative class action. Moreover, the JPML considered similar objections yet transferred individual federal actions to the MDL.

Second, centralization will not cause undue delay in the resolution of this matter. The MDL Court, with which the MCL Court is expected to coordinate, has reiterated its desire to resolve the federal matter quickly and, in fact, has appointed an extremely capable and well-respected settlement master, former FBI Director Robert S. Mueller, to further that goal. *See* Ex. C (12/22/15 Tr.) at 6:3-6 ("[T]his case has to have significant attention to immediate resolution of these cases. And that makes it somewhat different from what I call the run-of-the-mill MDL case."); *see* Ex. D (Pretrial Order No. 5) at 1 ("As the Court noted at the initial status conference, there is an urgent need to determine if all or some of the pending matters can be resolved by the parties sooner rather than later."). There is no reason to believe that a judge presiding over a consolidated MCL here will not be of the same mindset.

Third, the absence of centralization would result in prejudice to VWGoA and its affiliates that far outweighs any individual objections to centralization. VWGoA and its affiliates will benefit because rather than defending the same claims in at least twelve actions pending in ten vicinages at different speeds, which is inherently inefficient for the parties and the courts, VWGoA can coordinate logistics as well as its defense to these lawsuits.

- **Centralized management is fair and convenient to the parties, witnesses and counsel**

For the reasons set forth in analyzing the other criteria, as well as the JPML's observation that transfer and consolidation "will serve the convenience of the parties and witnesses and

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promote the just and efficient conduct of the litigation," Ex. A at 2, there is no real doubt but that centralized management will be fair and convenient to all involved. The parties will be involved in a single proceeding, in one track, subject to one scheduling order, before a single judge. No action will move before, or lag behind, any other action. This particularly is fair and just because all actions involve common questions of law and fact, as discussed above.

Centralization in Atlantic County Would Be Most Appropriate

VWGoA submits that centralization in Atlantic County is the most appropriate vicinage for these actions. The MCL Resource Book states that "MCL caseload in the vicinage will be considered," and according to the MCL Center website, Atlantic County has the least number of MCL actions.

* * * * *

For the reasons stated herein, VWGoA respectfully requests that all pending and future "Clean Diesel" cases filed against VWGoA and its affiliates should be granted MCL status because the criteria set forth in Rule 4:38A and Directive # 08-12 are satisfied.

In accordance with Rule 4:38A and Directive # 08-12, notice is being given to all plaintiffs' counsel who have filed the actions identified herein, as well as to each of the judges assigned to those matters, by way of copy of this Application.

Thank Your Honor for your kind consideration of this Application.

Respectfully submitted



Michael R. McDonald

MRM/jmt
Enclosures

cc: Taironda E. Phoenix, Esq. (Chief, Civil Court Programs) (via Federal Express)
All Judges and Counsel on Attached Service List

EXHIBIT A.

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

MDL No. 2672

TRANSFER ORDER

Before the Panel: Three motions have been filed by plaintiffs who move under 28 U.S.C. § 1407 to establish centralized pretrial proceedings for this litigation in, respectively, the Central District of California, the Southern District of Texas and the Eastern District of Virginia. Plaintiffs' motions include 63 actions pending in various districts, as listed on Schedule A.¹ The Panel also has been notified of 451 potentially related actions filed in over 60 federal districts.² These cases primarily concern certain 2.0 and 3.0 liter diesel engines sold by defendants Volkswagen Group of America, Volkswagen AG (collectively VW) and affiliated companies, which allegedly contain software that enables the vehicles to evade emissions requirements by engaging full emissions controls only when official emissions testing occurs.

No party opposes centralization, but the parties have advocated for 28 transferee districts located across the nation. VW responded in support of centralization in the Eastern District of Michigan or the Eastern District of Virginia, although at oral argument, VW announced that it no longer supported centralization in the Eastern District of Virginia. The United States and plaintiffs in several actions also support selection of the Eastern District of Michigan as the transferee district. Scores of plaintiffs, as well as amicus,³ have responded in support of centralization in the following districts: the Central, Eastern, Northern and Southern Districts of California; the Northern and Southern Districts of Illinois; the Eastern and Southern Districts of New York; the Northern and Southern Districts of Ohio; the Eastern, Middle and Western Districts of Tennessee; and the Northern District of Alabama, the District of Arizona, the District of the District of Columbia, the District of Kansas, the Western District of Kentucky, the Eastern District

* Judges Marjorie O. Rendell, Charles R. Breyer and Lewis A. Kaplan did not participate in the decision of this matter. Additionally, certain Panel members who could be members of the putative classes in this litigation have renounced their participation in these classes and have participated in this decision.

¹ Since the filing of the motions, one action pending in the Northern District of Ohio was dismissed.

² These and any other related actions are potential tag-along actions. See Panel Rules 1.1(h), 7.1 and 7.2.

³ The Competitive Enterprise Institute's Center for Class Action Fairness.

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of Louisiana, the District of Massachusetts, the District of Minnesota, the District of New Jersey, the Northern District of Texas and the Western District of Washington.

After considering the argument of counsel, we find that the actions in this litigation involve common questions of fact, and that centralization in the Northern District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions involve common factual questions regarding the role of VW and related entities in equipping certain diesel engines with software allegedly designed to engage emissions controls only when the vehicles undergo official testing, while at other times the engines emit nitrous oxide well in excess of legal limits. Since the filing of the motion, hundreds of cases, mostly class actions, have been filed on behalf of, *inter alia*, dealers, owners and lessees of affected vehicles. Centralization will eliminate duplicative discovery, avoid inconsistent pretrial rulings (especially on issues relating to class certification), and conserve the resources of the parties, their counsel and the judiciary.

This litigation began on September 18, 2015, when the U.S. Environmental Protection Agency issued a Notice of Violation of the Clean Air Act to Volkswagen AG, Audi AG and Volkswagen Group of America, Inc., that detailed the unauthorized use of a software-based defeat device in approximately 480,000 diesel automobiles manufactured since 2009.⁴ The litigation is international in scope. The vehicles addressed by the Notice of Violation are only a fraction of the estimated 11 million affected vehicles worldwide. Potentially relevant witnesses and evidence from VW and other entities involved in the design, production, sale and marketing of the affected vehicles and the components at issue likely are located outside of the United States. Indeed, much of the underlying conduct at the center of plaintiffs' claims likely occurred in Germany.

The parties' extensive briefing, as well as oral argument, has convinced us that this controversy touches multiple districts across the United States and that the various VW entities hold ties to many districts. For instance, VW Group of America and a similar division of Audi are based in the Eastern District of Virginia, where corporate executives and certain relevant documents and witnesses may be found. New Jersey is the domestic VW affiliates' State of Incorporation and where some of its U.S. and regional operations are based. The Eastern District of Michigan is where Environmental Protection Agency testing facilities and VW's Engineering and Environmental Office are located and governmental investigations reportedly are occurring. California is the State with the most affected vehicles and dealers, where significant testing of affected vehicles occurred, and the home of the California Air Resources Board, which played an important initial role in investigating and, ultimately, revealing VW's use of the defeat devices. Tennessee is home to a large VW manufacturing plant in Chattanooga that produced some of the affected vehicles. While all of these districts may yield some or even much discovery, no single district possesses a paramount factual connection to these cases. And none of the cases now before us has

⁴ Affected 2.0 liter TDI diesel models include: Jetta (Model Year 2009 – 2015); Jetta Sportwagen (2009-2014), Beetle (2012-2015), Beetle Convertible (2012-2015), Audi A3 (2010-2015), Golf (2010-2015), Golf Sportwagen (2015) and Passat (2012-2015). The EPA issued an additional, similar notice regarding further emissions cheating software on November 2, 2015, covering certain 3.0 liter diesel models: Volkswagen Touareg (2014), Porsche Cayenne (2015), Audi A6 Quattro (2016), Audi A7 Quattro (2016), Audi A8 (2016), Audi A8L (2016) and Audi Q5 (2016).

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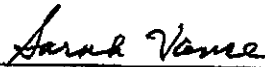
advanced so far in the few months since their filing as to give any particular district unique insight or knowledge of this controversy.

While any number of transferee districts could ably handle this litigation, we are persuaded that, in these circumstances, the Northern District of California is the appropriate transferee district for this litigation. There are 30 actions pending in the Northern District of California, including the first-filed case in the nation, and plaintiffs have filed a total of 101 cases in the state of California – nearly a fifth of all cases filed nationwide. As discussed, relevant documents and witnesses may be found in both the Northern District and throughout California, given the role played by the California Air Resources Board in uncovering VW's use of defeat devices on its diesel engines. We select Judge Charles R. Breyer as the transferee judge because he is a jurist who is thoroughly familiar with the nuances of complex, multidistrict litigation by virtue of having presided over nine MDL dockets, some of which involved numerous international defendants. We are confident that Judge Breyer will steer this controversy on a prudent and expeditious course.

Finally, the parties raise issues concerning whether certain types of actions should be included in the centralized proceedings. First, VW suggests that securities actions for owners of VW American Depositary Receipts should be included in a separate track in the MDL. VW stated in a recent filing that five cases involving these claims are pending in various districts. Second, plaintiff in the District of Montana *Ballew* action opposes inclusion of his action in the MDL proceedings, given the allegedly unique claims in that action that consumers should not have to continue to make payments to VW Credit, pursuant to the Federal Trade Commission's Holder Rule, 16 C.F.R. § 433.2, and the Uniform Commercial Code. Because none of these cases is on the present motions to transfer, these actions are not before us. Therefore, we will address the question of the inclusion of these cases in the conditional transfer order process. *See* Panel Rule 7.1.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the Northern District of California are transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Charles R. Breyer for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Ellen Segal Huvelle
Catherine D. Perry

R. David Proctor

**IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION**

MDL No. 2672

SCHEDULE A

Northern District of Alabama

WARREN MANUFACTURING INCORPORATED, ET AL. v. VOLKSWAGEN
GROUP OF AMERICA, INC., C.A. No. 2:15-01655
REDMOND v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 5:15-01648
LUCAS, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 5:15-01672

Central District of California

NETKIN v. VOLKSWAGEN OF AMERICA, INC., ET AL., C.A. No. 2:15-07367
MITSUDA v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 2:15-07375
ANGELO v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-07390
STEELE v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-07391
WALKER v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 2:15-07395
YELL v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 2:15-07429
MACAULEY v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 2:15-07430
STRICKLIN, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 2:15-07431
TEMKIN, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-07432
GIAUQUE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-07473
WEISS, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-07474
CROSSON, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 2:15-07475
KOUDSI, INC. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-07477
HILL v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 2:15-07517
MCCABE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 5:15-01930
HENDRICKS v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 5:15-01948
DELL'AQUILA, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 8:15-01525

Northern District of California

FIOL v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 4:15-04278
LAU, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 4:15-04302
BENIPAYO, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 4:15-04314
HALL v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 4:15-04340
MAYERSON, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 4:15-04390
GOODRICH, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 4:15-04397

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DRURY, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 4:15-04401
Southern District of California

BENNETT v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:15-02106
KARCSAY v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:15-02110
HANDAL v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:15-02127

District of Colorado

STANLEY, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-02113

Middle District of Florida

SMITH v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-00570

Southern District of Florida

LOWRANCE v. VOLKSWAGEN AG, ET AL., C.A. No. 0:15-61993
WEILAND v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 9:15-81316

Middle District of Georgia

WEST v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:15-00093

Northern District of Georgia

SILVERMAN v. VOLKSWAGEN AG, ET AL., C.A. No. 1:15-03332

Northern District of Illinois

DORN, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-08286

Southern District of Illinois

SMITH v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:15-01053
LANCE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:15-01058

Southern District of Iowa

GALL v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 3:15-00106

District of Kansas

BUSTAMANTE, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,
C.A. No. 2:15-09278

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Eastern District of Kentucky

TRIPLETT v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 0:15-00076

Western District of Kentucky

WAGNER v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 3:15-00748

District of Maryland

FELDMAN, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-02894

District of Massachusetts

NAPARSTEK v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-13418

BONDA v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-13419

KERWOOD v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-13435

Eastern District of Michigan

CARROLL v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-13360

Western District of Missouri

HENLEY v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 4:15-00734

District of New Jersey

LEVIN v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-06985

CRISTON v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-06988

DEFIESTA, ET AL. v. VOLKSWAGEN GROUP OF AMERICA INC., C.A. No. 2:15-07012

Eastern District of New York

CLINTON, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-05497

ENDY, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 1:15-05516

Western District of North Carolina

VINSON v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-00213

Southern District of Ohio

FARMER v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-00615

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District of Oregon

BRICKER v. VOLKSWAGEN GROUP OF AMERICA, C.A. No. 3:15-01785

Eastern District of Tennessee

HENDERSON v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:15-00248
SONNENBURG, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,
C.A. No. 1:15-00250

BULLARD v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL., C.A. No. 1:15-00251

Southern District of Texas

HARRIS v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 2:15-00405

District of Utah

CATLETT v. VOLKSWAGEN GROUP OF AMERICA, C.A. No. 2:15-00681

Eastern District of Virginia

BREWITT, ET AL. v. VOLKSWAGEN AG, ET AL., C.A. No. 1:15-01223

EXHIBIT B.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MDL No. 2672 CRB (JSC)

IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

**PRETRIAL ORDER NO. 6:
APPOINTMENT OF ROBERT S.
MUELLER III AS SETTLEMENT
MASTER**

This Order Relates To:

ALL ACTIONS

The Court previously provided notice of its intent to appoint **Robert S. Mueller III** as Settlement Master. (Pretrial Order No. 5, Dkt. No. 797.) The Court gave the parties an opportunity to respond to the Court's notice by January 15, 2016. *Id.* The date for the parties to respond has passed, and no party has objected to the appointment of Mr. Mueller. Accordingly, the Court orders as follows:

1. The Court appoints Robert S. Mueller III to facilitate settlement discussions among all parties to this multi-district litigation as soon as is feasible. Mr. Mueller will abide by the potential conflicts procedure outlined in Exhibit B to Pretrial Order No. 5. (Dkt. No. 797-2.)

2. Mr. Mueller's authority is limited to facilitating settlement discussions. Mr. Mueller will not adjudicate, or assist the Court with adjudicating, any issues in these consolidated proceedings.

3. The Settlement Process

a. As Settlement Master, Mr. Mueller has the authority to schedule at his discretion any settlement discussions; to decide who shall participate in the discussions, including what party representatives are needed; and to choose where and how the discussions are to occur.

1 b. Mr. Mueller, all counsel and parties, and any other persons participating in
2 settlement discussions shall treat as “confidential information” the contents of any written
3 settlement statements or other settlement-related communications, anything that happened or was
4 said, and any position taken or view expressed by any participant in connection with any
5 settlement conference or discussion. “Confidential information” shall not be:

6 (i) Disclosed to anyone not involved in the litigation;

7 (ii) Disclosed to the Court; or

8 (iii) Used for any purpose, including impeachment, in any pending or future
9 proceeding.

10 c. To facilitate settlement discussions, Mr. Mueller may have ex parte
11 communications with any party and party representative. If a party does not want Mr. Mueller to
12 share any of the contents of an ex parte communication with another party, the sharing party shall
13 make that desire clear to Mr. Mueller.

14 d. Notwithstanding paragraph 3(b)(ii) above, upon the agreement of all
15 participating parties, Mr. Mueller may communicate “confidential information” to the Court
16 without violating this Order or the rules governing confidentiality of settlement discussions. Mr.
17 Mueller may otherwise communicate with the Court regarding non-confidential matters, including
18 procedural issues and updates on the progress of settlement communications; but, as explained
19 above, he shall not communicate any substantive settlement matters to the Court absent the
20 parties’ agreement.

21 4. The non-government plaintiffs and defendants shall jointly compensate Mr.
22 Mueller and any personnel working under his direction at their normal and customary hourly rates.
23 Mr. Mueller may incur necessary expenses and costs at reasonable amounts to permit him to fully
24 facilitate settlement of these related actions, and the non-government plaintiffs and defendants
25 shall jointly reimburse Mr. Mueller for such costs and expenses. Such costs and expenses may
26 consist of, but are not limited to, the engagement of additional necessary personnel, including any
27 outside experts. Any disputes regarding compensation, costs and expenses, or the allocation of
28 payment of such fees and costs among the parties, shall be brought to the Court’s attention.

The Court thanks Mr. Mueller in advance for his service to the parties and the Court.

IT IS SO ORDERED.

Dated: January 19, 2016



CHARLES R. BREYER
United States District Judge

United States District Court
Northern District of California

EXHIBIT C.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

IN RE: VOLKSWAGEN "CLEAN)
DIESEL" MARKETING, SALES) Master File No.
PRACTICES, AND PRODUCTS) 3:15-MD-02672-CRB
LIABILITY LITIGATION.) MDL No. 2672
_____)

San Francisco, California
Tuesday, December 22, 2015

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Volkswagen: HERZFELD AND RUBIN, P.C.
125 Broad Street
New York, New York 10004
BY: JEFFREY L. CHASE, ESQUIRE

SULLIVAN AND CROMWELL LLP
125 Broad Street
New York, New York 10004
BY: ROBERT J. GIUFFRA, JR.

(Multiple counsel present in the courtroom as reflected in the minutes.)

Reported By: Katherine Powell Sullivan, CSR No. 5812, RMR, CRR
Official Reporter

1 they can't pick up their kids. Their lives are significantly
2 impaired by this process.

3 So I think that this case has to have significant
4 attention to immediate resolutions of these cases. And that
5 makes it somewhat different from what I call the
6 run-of-the-mill MDL case.

7 So those are my overall observations. I'm sure I will
8 have many as we go forward. But I thought it would be a good
9 idea, when I addressed Volkswagen, to get some sense of what
10 they see the landscape to be of the litigation and what steps
11 they're talking to address the immediacy of this problem.

12 Now, by my singling out the consumer, I am not in any way
13 suggesting that other people haven't been affected. Dealers,
14 all sorts of people have been affected by this. But, the
15 immediacy seems to rest primarily, the immediacy of resolution,
16 necessity of arriving at some resolution, seems to rest
17 primarily, I think, with the consumers, the customer of
18 Volkswagen.

19 So I'd like to hear, now, from defense as to the issues
20 I've raised.

21 MR. CHASE: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. CHASE: Jeffrey Chase on behalf of defendant
24 Volkswagen Group of America. I will also be appearing on
25 behalf of Volkswagen AG, Volkswagen of Germany, Audi AG, and

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Wednesday, December 23, 2015

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter

EXHIBIT D.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MDL No. 2672 CRB (JSC)

IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

**PRETRIAL ORDER NO. 5: NOTICE OF
INTENT TO APPOINT ROBERT S.
MUELLER, III AS SETTLEMENT
MASTER**

This Order Relates To:

ALL ACTIONS

As the Court noted at the initial status conference, there is an urgent need to determine if all or some of the pending matters can be resolved by the parties sooner rather than later. To that end, the Court invited the parties to suggest persons to be appointed by the Court to facilitate settlement discussions among the parties. Pretrial Order No. 1 (Dkt. No. 2). The Court has carefully reviewed the suggestions, and after given the issue considerable thought, gives notice of its intent to appoint **Robert S. Mueller, III** as settlement master.¹

Mr. Mueller served as the sixth Director of the FBI from September 2001 through 2013. He was nominated by President George W. Bush, and his initial ten-year term was extended for an additional two years at the request of President Barack Obama and pursuant to congressional legislation. He is currently a partner at WilmerHale in Washington, D.C. Mr. Mueller's biography is attached to this Order as Exhibit A.

¹ The Court will not appoint Mr. Mueller to perform any adjudicatory functions, or to even advise the Court on such matters; accordingly, the Court does not intend to appoint him pursuant to Federal Rule of Civil Procedure 53. Attached to this Order as Exhibit B is a letter from Mr. Mueller agreeing to serve as settlement master and explaining his law firm's Volkswagen-related engagements. The Court does not believe that any of these engagements make Mr. Mueller's appointment to facilitate settlement discussions inappropriate.

United States District Court
Northern District of California

The Court has known Mr. Mueller professionally for more than 40 years, beginning with his service as an Assistant United States Attorney in the Northern District of California, and including his tenure as the United States Attorney for the Northern District of California from 1998 through 2001. There are few, if any, people with more integrity, good judgment, and relevant experience than Mr. Mueller. Mr. Mueller will not adjudicate, or assist the Court with adjudicating, any issues in these consolidated proceedings; rather, his role will be to use his considerable experience and judgment to facilitate settlement discussions among the various parties in these complex matters. His government and private practice experience makes him uniquely qualified to work with and earn the trust of the parties, including the consumer and car dealer plaintiffs, the United States government, the Volkswagen defendants, and the interested state governments.

The Court shall give the parties an opportunity to respond to the Court's suggestion of the appointment of Mr. Mueller. Any responses shall be filed on or before noon on **January 15, 2016** and shall not exceed three pages.

IT IS SO ORDERED.

Dated: January 11, 2016



CHARLES R. BREYER
United States District Judge

Robert S. Mueller, III

Robert S. Mueller, III served as the sixth Director of the FBI from September 2001 to September 2013. He was nominated by President George W. Bush and was sworn in as Director on September 4, 2001 – just one week before 9/11.

His ten-year term was extended for an additional two years at the request of President Barack Obama and pursuant to legislation passed by Congress.

Born in New York City, Mr. Mueller grew up outside of Philadelphia. He graduated from Princeton University in 1966 and later earned a master's degree in International Relations at New York University in 1967.

After college, he joined the United States Marine Corps, where he served as an officer for three years, leading a rifle platoon of the Third Marine Division in Vietnam. He is the recipient of the Bronze Star, two Navy Commendation Medals, the Purple Heart and the Vietnamese Cross of Gallantry.

Following his military service, Mr. Mueller earned a law degree from the University of Virginia Law School in 1973 and served on the Law Review.

After completing his education, Mr. Mueller worked as a litigator in San Francisco until 1976. He then served for 12 years in the United States Attorney's Offices, first in the Northern District of California in San Francisco, where he rose to be chief of its criminal division. In 1982, he moved to Boston as an Assistant United States Attorney where he investigated and prosecuted major financial fraud, terrorist and public corruption cases, as well as narcotics conspiracies and international money launderers.

After serving as a partner at the Boston law firm of Hill and Barlow, Mr. Mueller returned to public service. In 1989 he served in the United States Department of Justice as an assistant to Attorney General Richard L. Thornburgh. The following year he took charge of its Criminal Division. During his tenure, he oversaw prosecutions including the conviction of Panama leader Manuel Noriega, the Lockerbie Pan Am 103 bombing case and the John Gotti mobster prosecution. In 1991, he was elected Fellow of the American College of Trial Lawyers.

In 1993, Mr. Mueller became a partner at Boston's Hale and Dorr, specializing in complex white collar crime litigation. He returned to public service in 1995 as senior litigator in the Homicide Section of the District of Columbia United States Attorney's Office. In 1998, Mr. Mueller was named United States Attorney in San Francisco and held that position until 2001. He then served as Acting Deputy Attorney General of the United States Department of Justice for several months before becoming FBI Director. Mr. Mueller is currently a partner at WilmerHale in Washington, DC, where his practice focuses on investigations, crisis management, privacy and cyber security work.

WILMERHALE

January 8, 2016

Robert S. Mueller III

The Honorable Charles R. Breyer
Senior District Judge
United States District Court
Northern District of California
San Francisco Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Judge Breyer:

Thank you for considering me for the role of Settlement Master. I would be willing to serve in that capacity.

With regard to potential conflicts of interest, to my knowledge I have not represented any Volkswagen entities.

As you know, I am currently a partner at WilmerHale. I joined WilmerHale in March 2014 after spending almost 20 years in the federal government as a federal prosecutor, as the United States Attorney in San Francisco, and as Director of the Federal Bureau of Investigation.

A review of the firm's representations identified the following matters involving or otherwise connected to Volkswagen AG, its subsidiaries, and affiliates (VW). I have participated in none of the matters described below. Should I be selected, I, and any WilmerHale personnel assisting me, would be walled off from these matters and any new matters involving VW that the firm might undertake during the course of the Settlement Master assignment. Firm attorneys assigned to any of the matters described below would be walled off from my work as Settlement Master. In addition, the firm has a "restricted access" protocol for certain highly confidential or sensitive matters, which would be implemented for this assignment. The WilmerHale matters involving or otherwise connected to VW are as follows:

- WilmerHale has since 2011 represented VW in an arbitration with Suzuki relating to the termination of their cooperation agreement. The arbitration has been substantial and is entering a second phase.
- WilmerHale represents PricewaterhouseCoopers AG, VW's auditor, regarding the audit implications of the ongoing diesel emission investigations and litigation. We also represent various other PricewaterhouseCoopers entities in other, unrelated matters.
- WilmerHale was recently retained by VW for advice on U.S. tax matters regarding diesel emissions.

WILMERHALE

January 8, 2016

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- WilmerHale is advising VW on potential damages claims arising from the car glass cartel investigation.
- WilmerHale is advising VW on certain compliance/regulatory matters that do not relate to diesel emissions.
- WilmerHale is advising MAN SE (a truck brand VW owns) on certain compliance issues.
- WilmerHale is also adverse to VW and brands that VW owns in a variety of matters unrelated to the engagements described above.
- WilmerHale has former representations for VW; none of these matters relates to diesel emissions.

I also note that Matthias Wissmann, a partner in WilmerHale's Berlin office, is President of the German Association of the Automotive Industry, the Verband der Automobilindustrie (VDA). Mr. Wissmann's role does not prohibit him or the firm from taking matters for and against VDA members, including VW. Mr. Wissmann would be walled off from my work as Settlement Master. Finally, I should add that in November 2014 I participated in a panel discussion on cyber issues at the annual VDA conference.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert S. Mueller III". The signature is fluid and cursive, with a stylized "R" and "M".

Robert S. Mueller III